

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re: Emery L. Kostura,	:	Chapter 7
	:	
Debtor.	:	Bky. No. 21-12370 (PMM)
	:	

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO AVOID LIEN

AND NOW, upon consideration of the Debtor's Motion to Avoid Lien (doc. # 15, the "Motion") of Capital One Bank (USA) ("Capital One");

AND the Motion seeking to avoid the judgment lien of Capital One (the "Lien") in the amount of \$8,624.55 pursuant to 11 U.S.C. §522(f)(1)(A);

AND the Motion asserting that the Lien impairs the Debtor's entitled exemption to property located at 1876 Harold Avenue in Allentown, PA (the "Property");

AND the Property being valued on the Debtor's Schedule A at \$150,000.00;

AND the Property being encumbered by a mortgage lien held by Select Portfolio Servicing in the amount of \$115,086.00, see Schedule D;

AND the Debtor electing pursuant to 11 U.S.C. §522(b)(2) to exempt certain property of the estate under the federal exemption scheme set forth in subsection (d) of section 522. See Schedule C;

AND section 522(d)(1) entitling the Debtor to an exemption of up to \$25,150.00 in the Property, of which the Debtor has claimed the full amount;

AND section 522(d)(5) entitling the Debtor to take an additional exemption "in any

property, not to exceed in value \$1,325..." of which the Debtor has claimed \$495.00;

AND a hearing on the Motion having been held and concluded on January 4, 2022;

AND for reasons discussed at the hearing, the Debtor being entitled to exempt only a portion of the Lien;

AND the exemptible portion of the Lien being determined as follows:

- The Property is worth \$150,000.00;
- The existing mortgage lien on the Property is \$115,086.00;
- The existing tax lien on the Property is \$5,068.00;
- The amount of the Capital One Judgment Lien is \$9,787.44;¹
- The Debtor's equity in the Property is, therefore, \$20,058.56;
- The Debtor's allowed exemptions, however, are \$25,645.00;
- But for the Capital One Judgment Lien, the Debtor's entire exemptions would be unimpaired. The Judgment Lien impairs the exemptions to the extent of \$5,586.44, the difference between the allowed exemptions and the Debtor's equity. The Capital One Judgment Lien will be avoided to that extent;
- The Debtor's non-exempt equity in the Property is \$4,201.00; this is the amount of the Lien that is *not avoidable*.

It is therefore **ordered** that:

- 1) The Motion is **granted in part and denied in part**;
- 2) The Judgment Lien of Capital One is **avoided to the extent of \$5,586.44**;
- 3) The balance of the Judgment Lien in the amount of **\$4,201.00** is **not avoided**.

Dated: 1/5/2022



PATRICIA M. MAYER
UNITED STATES BANKRUPTCY JUDGE

¹ This figure is comprised of the original judgment amount (\$8,624.55) plus statutory interest (6% per annum) accrued annually from the date of entry (June 21, 2019) up to the petition date.